

Assembly Bill No. 3115

CHAPTER 672

An act to amend Sections 22340 and 22600 of, and to add and repeal Sections 22340.1 and 22600.1 of, the Financial Code, relating to loans.

[Approved by Governor September 20, 1996. Filed
with Secretary of State September 23, 1996.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3115, Gallegos. Loans.

Under the California Finance Lenders Law, with respect to consumer or commercial loans, a licensed finance lender or broker may sell certain promissory notes to institutional investors, as defined, evidencing the obligation to repay the loans. A licensee may sell promissory notes for loans made by the licensee or for loans purchased from and made by another licensee under this law.

This bill would provide, until January 1, 2000, that a licensed finance lender may sell promissory notes that evidence the obligation to repay certain types of loans, purchased from and made by an institutional lender, as specified, and may make agreements for the collection of payments and performance of services with respect to those notes.

The bill would also include a residential mortgage lender in the definition of an institutional investor, with respect to consumer loans.

Under the California Finance Lenders Law, for purposes of consumer loans, an institutional investor is defined to include a trust or other business entity established by an institutional investor for specified purposes, if certain requirements are met.

This bill would, for purposes of commercial loans regulated under the California Finance Lenders Law, define an institutional investor in the same manner.

The people of the State of California do enact as follows:

SECTION 1. Section 22340 of the Financial Code is amended to read:

22340. (a) A licensee may sell promissory notes evidencing the obligation to repay loans made by the licensee pursuant to this division or evidencing the obligation to repay loans purchased from and made by another licensee pursuant to this division to institutional investors, and may make agreements with institutional investors for the collection of payments or the performance of services with respect to those notes.

(b) For the purpose of this section, “institutional investor” means the following:

(1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing.

(2) A bank, trust company, savings bank or savings and loan association, credit union, industrial bank or industrial loan company, finance lender, residential mortgage lender, or insurance company doing business under the authority of and in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(3) Trustees of pension, profit sharing, or welfare funds, if the pension, profit sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000), except pension, profit sharing, or welfare funds of a licensee or its affiliate, self-employed individual retirement plans, or individual retirement accounts.

(4) A corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation; provided, however, that the purchaser represents that it is purchasing for its own account for investment and not with a view to or for sale in connection with any distribution of the promissory note.

(5) A syndication or other combination of any of the foregoing that is organized to purchase the promissory note.

(6) A trust or other business entity established by an institutional investor for the purpose of issuing or facilitating the issuance of undivided interests in, the right to receive payments from, or that are payable primarily from, a pool of financial assets held by the trust or business entity if all of the following apply:

(A) The business entity is not a sole proprietorship.

(B) The pool of assets consists of one or more of the following:

(i) Interest bearing obligations.

(ii) Other contractual obligations representing the right to receive payments from the assets.

(iii) Surety bonds, insurance policies, letters of credit, or other instruments providing credit enhancements for these assets.

(C) The interests will be either of the following:

(i) Rated investment grade by Standard & Poor’s Corporation or Moody’s Investors Service, Inc. “Investment grade” means that the securities will be rated by Standard & Poor’s Corporation as AAA, AA, A, or BBB, or by Moody’s Investor Service, Inc., as Aaa, Aa, A, or Baa, including a rating with a “+” or “—” designation or other variations that occur within these ratings.



(ii) Sold to an institutional investor as otherwise defined in this section.

(D) The offer and sale of the securities is qualified under the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) or is registered under federal securities laws, or is exempt from qualification or registration.

(c) In the absence of agreement to the contrary by the licensee and the institutional investor, all payments received from the collection of payments shall be deposited and maintained in a trust account, and shall be disbursed from the trust account only in accordance with the instructions of the owner of the promissory note.

SEC. 2. Section 22340.1 is added to the Financial Code, to read:

22340.1. (a) A licensee that is a finance lender may sell to (1) an institutional lender, or (2) an institutional investor described in paragraph (6) of subdivision (b) of Section 22340, promissory notes evidencing the obligation to repay federally related mortgage loans, as defined in Section 3500.2 of Title 24 of the Code of Federal Regulations, purchased from and made by an institutional lender, and may make agreements for the collection of payments and performance of services with respect to those notes. For purposes of this section, “institutional lender” means any bank, trust company, savings bank or savings and loan association, credit union, industrial loan company or residential mortgage lender doing business under the authority of and in accordance with a license, certificate or charter issued by the United States or this state.

(b) In the absence of agreement to the contrary by the licensee and the institutional investor or institutional lender, all payments received from the collection of payments shall be deposited and maintained in a trust account, and shall be disbursed from the trust account only in accordance with the instructions of the owner of the promissory note.

(c) This section shall be repealed on January 1, 2000, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends that date.

SEC. 3. Section 22600 of the Financial Code is amended to read:

22600. (a) A licensee may sell promissory notes evidencing the obligation to repay loans made by the licensee pursuant to this division or evidencing the obligation to repay loans purchased from and made by another licensee pursuant to this division to institutional investors, and may make agreements with institutional investors for the collection of payments or the performance of services with respect to those notes.

(b) For the purposes of this section, “institutional investor” means the following:

(1) The United States or any state, district, territory, or commonwealth thereof, or any city, county, city and county, public

district, public authority, public corporation, public entity, or political subdivision of a state, district, territory, or commonwealth of the United States, or any agency or other instrumentality of any one or more of the foregoing.

(2) Any bank, trust company, savings bank or savings and loan association, credit union, industrial bank or industrial loan company, finance lender, or insurance company doing business under the authority of and in accordance with a license, certificate, or charter issued by the United States or any state, district, territory, or commonwealth of the United States.

(3) Trustees of pension, profit sharing, or welfare funds, if the pension, profit sharing, or welfare fund has a net worth of not less than fifteen million dollars (\$15,000,000), except pension, profit sharing, or welfare funds of a licensee or its affiliate, self-employed individual retirement plans, or individual retirement accounts.

(4) Any corporation with outstanding securities registered under Section 12 of the Securities Exchange Act of 1934 or any wholly owned subsidiary of that corporation; provided, however, that the purchaser represents that it is purchasing for its own account for investment and not with a view to or for sale in connection with any distribution of the promissory note.

(5) Any syndication or other combination of any of the foregoing that is organized to purchase the promissory note.

(6) A trust or other business entity established by an institutional investor for the purpose of issuing or facilitating the issuance of undivided interests in, the right to receive payments from, or that are payable primarily from, a pool of financial assets held by the trust or business entity if all of the following apply:

(A) The business entity is not a sole proprietorship.

(B) The pool of assets consists of one or more of the following:

(i) Interest bearing obligations.

(ii) Other contractual obligations representing the right to receive payments from the assets.

(iii) Surety bonds, insurance policies, letters of credit, or other instruments providing credit enhancements for these assets.

(C) The interests will be either of the following:

(i) Rated investment grade by Standard & Poor's Corporation or Moody's Investors Service, Inc. "Investment grade" means that the securities will be rated by Standard & Poor's Corporation as AAA, AA, A, or BBB, or by Moody's Investor Service, Inc., as Aaa, Aa, A, or Baa, including a rating with a "+" or "-" designation or other variations that occur within these ratings.

(ii) Sold to an institutional investor as otherwise defined in this section.

(D) The offer and sale of the securities is qualified under the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code) or is registered

under federal securities laws, or is exempt from qualification or registration.

(c) In the absence of agreement to the contrary by the licensee and the institutional investor, all payments received from the collection of payments shall be deposited and maintained in a trust account, and shall be disbursed from the trust account only in accordance with the instructions of the owner of the promissory note.

SEC. 4. Section 22600.1 is added to the Financial Code, to read:

22600.1. (a) A licensee that is a finance lender may sell to (1) an institutional lender, or (2) an institutional investor described in paragraph (6) of subdivision (b) of Section 22600, promissory notes evidencing the obligation to repay real estate secured business purpose loans, as defined in Section 3500.5 of Title 24 of the Code of Federal Regulations, purchased from and made by an institutional lender, and may make agreements for the collection of payments and performance of services with respect to those notes. For purposes of this section, “institutional lender” means any bank, trust company, savings bank or savings and loan association, credit union, or industrial loan company doing business under the authority of and in accordance with a license, certificate or charter issued by the United States or this state.

(b) In the absence of agreement to the contrary by the licensee and the institutional investor or institutional lender, all payments received from the collection of payments shall be deposited and maintained in a trust account, and shall be disbursed from the trust account only in accordance with the instructions of the owner of the promissory note.

(c) This section shall be repealed on January 1, 2000, unless a later enacted statute, which becomes effective on or before January 1, 2000, deletes or extends that date.

SEC. 5. The amendment made to Section 22600 of the Financial Code by Section 3 of this act is intended to clarify the authority of a licensed finance lender, under existing law, to sell either commercial or consumer loans to a trust or other business entity established for the purpose of issuing securities described in paragraph (6) of subdivision (b) of Section 22340 of, and paragraph (6) of subdivision (b) of Section 22600 of, the Financial Code.

